

University's ability to conduct depositions and serve document requests and other discovery requests related to this issue. The University may also seek discovery from Plaintiff's medical providers regarding the contents of any previously existing records relating to Plaintiff.

3. Plaintiff shall, within ten (10) days of the date of this Order, produce all records from the six (6) medical providers identified in "Exhibit A" to the University's Motion.
4. Plaintiff shall, within ten (10) days of the date of this Order, provide a verified interrogatory response giving a complete list of all of Plaintiff's medical providers from birth to present. Plaintiff's response shall be accompanied by a signed affidavit providing that, to the best of Plaintiff's recollection, the list is a full and complete list of Plaintiff's medical providers from birth to the present.

Failure to comply with this Order shall subject Plaintiff to sanctions upon further Order of the Court.

IT IS SO ORDERED

, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE 6

Plaintiff,

V.

THE PENNSYLVANIA STATE UNIVERSITY,
THE SECOND MILE, and GERALD
SANDUSKY,

Defendants.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
2	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50	52	54	56	58	60	62	64	66	68	70	72	74	76	78	80	82	84	86	88	90	92	94	96	98	100	102	104	106	108	110	112	114	116	118	120	122	124	126	128	130	132	134	136	138	140	142	144	146	148	150	152	154	156	158	160	162	164	166	168	170	172	174	176	178	180	182	184	186	188	190	192	194	196	198	200
3	3	6	9	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114	117	120	123	126	129	132	135	138	141	144	147	150	153	156	159	162	165	168	171	174	177	180	183	186	189	192	195	198	201	204	207	210	213	216	219	222	225	228	231	234	237	240	243	246	249	252	255	258	261	264	267	270	273	276	279	282	285	288	291	294	297	300
4	4	8	12	16	20	24	28	32	36	40	44	48	52	56	60	64	68	72	76	80	84	88	92	96	100	104	108	112	116	120	124	128	132	136	140	144	148	152	156	160	164	168	172	176	180	184	188	192	196	200	204	208	212	216	220	224	228	232	236	240	244	248	252	256	260	264	268	272	276	280	284	288	292	296	300	304	308	312	316	320	324	328	332	336	340	344	348	352	356	360	364	368	372	376	380	384	388	392	396	400
5	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	105	110	115	120	125	130	135	140	145	150	155	160	165	170	175	180	185	190	195	200	205	210	215	220	225	230																																																						

Civil Action No. 13-0336

**DEFENDANT THE PENNSYLVANIA STATE UNIVERSITY'S
SUPPLEMENTAL MOTION TO COMPEL DISCOVERY**

Pursuant to the Court’s instructions during the telephonic oral argument held on March 23, 2015 regarding Defendant The Pennsylvania State University (the “University”)'s Motion to Compel, the University moves this Court for an Order: (1) directing that Plaintiff John Doe 6 preserve and maintain, and direct his medical providers to preserve and maintain, all records regarding Plaintiff’s medical history from birth to the present; (2) granting authorization to the University to fully investigate the collection, maintenance, preservation and destruction of Plaintiff’s medical records in this case, including efforts made by Plaintiff and Plaintiff’s counsel to locate and preserve Plaintiff’s medical records, and, for some or all of the records that no longer exist, when, how and why the records were discarded, destroyed or lost; (3) compelling Plaintiff to produce all records from the six medical providers identified in the accompanying “Exhibit A” filed separately under seal; and (4) compelling Plaintiff to provide a verified interrogatory response giving a complete list of all of Plaintiff’s medical providers from birth to

present accompanied by an affidavit providing that, to the best of Plaintiff's recollection, the list is a full and complete list of Plaintiff's medical providers from birth to the present.

Defendant The Pennsylvania State University respectfully requests that the Court grant the University's Motion and enter the attached Order.

Respectfully submitted,

/s/ Gregory G. Schwab
Robert C. Clothier
Gregory G. Schwab
Saul Ewing LLP
1500 Market Street, 38th Floor
Philadelphia, PA 19102
215 972-7777

*Attorneys for Defendant The
Pennsylvania State University*

Date: April 1, 2015

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In Defendant The Pennsylvania State University's Motion to Compel (Doc. No. 112), the University moved this Court for an Order compelling Plaintiff John Doe 6 ("Plaintiff") to produce all medical records and identify all medical providers. The University also noted that Plaintiff's delay was actively prejudicing the University, due to the recent destruction of at least two significant mental health treatment providers' records long after Plaintiff filed this lawsuit and well before Plaintiff disclosed the providers' identities to the University. The University also sought an Order compelling Plaintiff to produce information (e.g., affidavits by and/or communications with such custodians) that shows the efforts, if any, made to locate Plaintiff's medical records and, if some or all of the records no longer exist, when, how and why the records were discarded, destroyed or lost.

On March 23, 2015, a telephonic oral argument was held regarding the University's Motion to Compel.¹ During the oral argument, in light of the serious discovery issues, delays, and destruction of certain significant records by at least two of Plaintiff's medical providers, the Court advised that it would issue an order that all of Plaintiff's medical records from birth to present must be maintained. *See Exhibit B* at p. 21.

Additionally, the Court advised that it would grant the University authorization to investigate the collection, maintenance, preservation and destruction of Plaintiff's medical records. *See id.* at pp. 13-18. Such authorization was noted to include, among other things, (1) obtaining Plaintiff's medical records from any medical treatment providers, (2) contacting Plaintiff's medical providers regarding their collection, maintenance, and destruction of records; (3) investigating (a) whether or not Plaintiff's counsel and his agents acted appropriately and (b) any communications Plaintiff's medical providers had with Plaintiff or others acting on his behalf, and (4) conducting depositions. *Id.* at pp. 15-18.

Additionally, in response to Plaintiff's repeated failure to provide records for numerous significant medical treatment providers, including mental health providers, the Court ruled that Plaintiff must provide all records for the six (6) most significant medical providers for whom Plaintiff had not provided records. *See id.* at pp. 22, 23.

Finally, in light of Plaintiff's failure to disclose a complete list of his medical providers in response to the University's interrogatories, the Court ruled that Plaintiff must provide the University with a verified interrogatory response giving a complete list of all of Plaintiff's medical providers from birth to present. The Court ruled that Plaintiff's response shall be

¹ The transcript of the March 23, 2015 telephonic oral argument has been filed separately under seal as "Exhibit B" to this motion.

accompanied by a signed affidavit providing that, to the best of Plaintiff's recollection, the list is a full and complete list of Plaintiff's medical providers from birth to the present.

The Court further ordered the University to submit this Supplemental Motion to Compel with an order that memorialized its rulings made during the oral argument.

Accordingly, the University respectfully requests that the Court grant the University's Supplemental Motion to Compel and enter the attached proposed Order, setting forth the following:

- Directing Plaintiff John Doe 6 to preserve and maintain, and direct his medical providers to preserve and maintain, all records regarding Plaintiff's medical history from birth to the present;
- Granting authorization to the University to fully investigate the collection, maintenance, preservation, and destruction of Plaintiff's medical records in this case, including efforts made by Plaintiff and Plaintiff's counsel to locate and preserve Plaintiff's medical records, and, for some or all of the records that no longer exist, when, how and why the records were discarded, destroyed or lost. Such authorization would include, but is not limited to, conducting depositions as well as seeking discovery from those providers regarding the contents of any previously existing records;
- Ordering Plaintiff to produce all records from the six (6) medical providers identified in the accompanying Exhibit A filed separately under seal by the University; and
- Ordering Plaintiff to provide a verified interrogatory response giving a complete list of all of Plaintiff's medical providers from birth to present, accompanied by a

signed affidavit providing that, to the best of Plaintiff's recollection, the list is a full and complete list of Plaintiff's medical providers from birth to the present.

Respectfully submitted,

/s/ Gregory G. Schwab
Robert C. Clothier
Gregory G. Schwab
Saul Ewing LLP
1500 Market Street, 38th Floor
Philadelphia, PA 19102
215 972-7777
Counsel for Defendant
The Pennsylvania State University

Date: April 1, 2015

CERTIFICATE OF SERVICE

I certify that I have filed the foregoing document with ECF and it is available therein for download by counsel for all parties, who are ECF subscribers.

/s Gregory G. Schwab
Gregory G. Schwab
Attorney for Defendant
The Pennsylvania State University

Date: April 1, 2015

Defendants.

Civil Action No. 13-0336

CERTIFICATION PURSUANT TO LOCAL RULE 26(f)(1)

I, Gregory G. Schwab, certify that defendant Pennsylvania State University has made a reasonable effort to resolve this dispute with Plaintiff John Doe 6, but the parties have been unable to resolve the dispute. The University has repeatedly requested full responses to the interrogatories and document requests at issue, both over the phone and in writing. We have reached an impasse regarding these discovery requests.

/s/ Gregory G. Schwab
Gregory G. Schwab

Date: April 1, 2015

EXHIBIT A
FILED UNDER SEAL

EXHIBIT B
FILED UNDER SEAL